

**THE URBAN LAW FIRM**

MICHAEL A. URBAN, Nevada State Bar No. 3875

NATHAN R. RING, Nevada State Bar No. 12078

4270 S. Decatur Blvd., Suite A-9

Las Vegas, Nevada 89103

Telephone: (702) 968-8087

Facsimile: (702) 968-8088

Electronic Mail: murban@theurbanlawfirm.com

nring@theurbanlawfirm.com

*Counsel for Plaintiffs Laborers Joint Trust Funds*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

THE BOARD OF TRUSTEES OF THE  
CONSTRUCTION INDUSTRY AND  
LABORERS HEALTH AND WELFARE  
TRUST; THE BOARD OF TRUSTEES OF  
THE CONSTRUCTION INDUSTRY AND  
LABORERS JOINT PENSION TRUST;  
THE BOARD OF TRUSTEES OF THE  
CONSTRUCTION INDUSTRY AND  
LABORERS VACATION TRUST; THE  
BOARD OF TRUSTEES OF SOUTHERN  
NEVADA LABORERS LOCAL 872  
TRAINING TRUST,

Plaintiffs,

vs.

WESTERN EXPLOSIVES SYSTEMS  
COMPANY, a Delaware corporation,

Defendant.

CASE NO:

**COMPLAINT FOR BREACH OF  
CONTRACT AND BREACH OF ERISA**

**[29 U.S.C. § 185(a) and § 1132(e)]**

Plaintiffs, jointly and severally, complain and allege as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).



1 (“Local 872”) and WESCO. The CBAs incorporate by reference the Master Labor Agreement  
2 between Local 872 and Contractors Associations and the Trust Agreements establishing the Plaintiff  
3 Trust Funds for WESCO’s employees’ work on certain projects. The CBAs name the Trust Funds  
4 as third-party beneficiaries of those agreements.

5 9. WESCO is an employer whose employees perform work covered under the CBA.  
6 Pursuant to the CBAs, WESCO agreed to abide by the Trust Agreements, which establish and  
7 govern the operation of the Plaintiff Trust Funds.

8 10. WESCO is an “employer,” as that term is defined in the CBAs and related Trust  
9 Agreements.

10 11. WESCO is an “employer” as defined and used in Section 3(5) of ERISA, as codified  
11 at 29 U.S.C. § 1002(5), and therefore, WESCO is “obligated to make contributions to a multi-  
12 employer plan” within the meaning of Section 515 of ERISA, as codified at 29 U.S.C. § 1145.  
13 Plaintiffs allege that WESCO is an “employer” engaged in “commerce” in an “industry affecting  
14 commerce,” as those terms are defined and used in Section 501(1) and Section 501(3) of the LMRA,  
15 as codified at 29 U.S.C. § 142(1) and § 142(3), and within the meaning and use of Section 301(a)  
16 of the LMRA, 29 U.S.C. § 185(a).

17  
18 **FIRST CLAIM FOR RELIEF**  
19 **Breach of Written Collective Bargaining**  
20 **Agreements and Related Trust Agreements – WESCO**

21 12. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs 1  
22 through 11, inclusive, as though fully set forth herein.

23 13. At all times material to this Complaint, there was in effect CBAs between Local 872  
24 and WESCO. The CBAs incorporate by reference the Trust Agreements establishing the Trusts.

25 14. WESCO is an employer whose employees performed work were covered under the  
26 CBAs between WESCO and Local 872. Pursuant to the CBAs, WESCO agreed to abide by the  
27 Trust Agreements, which establish and govern the operation of the Trusts.

28 15. By the terms and provisions of the CBAs, and related Trust Agreements, and at all  
times material herein, Defendant WESCO was obligated to the following:

1           15.1 Defendant WESCO was obligated to prepare and submit true, complete and  
2 accurate written monthly contribution reports to the Trusts on a timely basis showing i) the  
3 identities of employees performing work covered by the CBAs, ii) the number of hours  
4 worked by or paid to these employees, iii) the rates of pay, iv) character of hours worked  
5 (e.g., straight time, over-time, etc.), and v) based upon the hours worked or amounts paid to  
6 employees, the proper calculation of the fringe benefit contributions, benefits and/or  
7 withholdings attributable to its employees. These monthly contribution reports are due on  
8 the 10<sup>th</sup> day of each successive month;

9           15.2 Defendant WESCO was required to maintain adequate records of work  
10 performed by and amounts paid to its employees. WESCO was obligated to permit the Trusts  
11 and their agents to conduct audits of WESCO's payroll and related records in order to  
12 determine whether or not fringe benefit contributions were properly paid pursuant to the  
13 CBAs and Trust Agreements;

14           15.3 Defendant WESCO was obligated to properly pay fringe benefit  
15 contributions to the Trusts. Benefits and/or other withholdings were to be made on a  
16 monthly basis, and at specified rates for each hour worked by or paid to applicable  
17 employees; these amounts are due and payable at the Trusts' administrative offices.

18           16. WESCO is known to be bound to CBAs for work at Apex and under the Southern  
19 Nevada Water Authority PLA.

20           17. On or about December 7, 2018, Plaintiffs, through their counsel, demanded WESCO  
21 provide payroll and related records of WESCO beginning from the time period of January 1, 2015  
22 through the present, in order to allow Plaintiffs' auditors to complete an audit of WESCO.

23           18. Plaintiff's counsel and WESCO's counsel met on December 16, 2018 to discuss  
24 WESCO's compliance with the payroll audit.

25           19. On or about January 15, 2019, Plaintiffs, through their counsel, sent a follow up  
26 demand to WESCO and its counsel to demand production of the payroll and related records of  
27 WESCO beginning from the time period of January 1, 2015 through the present.  
28

1           20.     Since the first attorney demand letter December 2018, WESCO has failed and  
2 refused to provide any of the requested payroll records.

3           21.     On February 19, 2019, WESCO contacted the Trusts' auditors to state records would  
4 be provided but to date no records have been provided by WESCO.

5           22.     Due to WESCO's refusal to permit an audit, the exact amount of contributions and/or  
6 contract damages, if any, due and owing have not been ascertained at this time. These amounts, if  
7 any exist, will be established by proof at trial herein or through dispositive motion following  
8 completion of an audit. WESCO's refusal to produce all requested documents is a breach of the  
9 CBAs and Trust Agreements.

10          23.     Pursuant to the terms of the CBAs and Trust Agreements, WESCO also promised  
11 that, in the event of any delinquency, it would pay any legal and auditing costs in connection with  
12 such delinquency, whether incurred before or after litigation commenced.

13          24.     It has been necessary for the Trusts to engage The Urban Law Firm for the purpose  
14 of obtaining the payroll and related records of WESCO to complete the audit, collect any and all  
15 amounts due, and to otherwise enforce the terms of the CBAs and Trust Agreements.

16          25.     Pursuant to the CBAs, Trust Agreements, and 29 U.S.C. §1132(g)(2), the Trusts are  
17 entitled to an award of their reasonable attorney's fees incurred to enforce the same, even if no  
18 delinquency is discovered by the audit.

19          26.     Pursuant to 29 U.S.C. §1132(g)(2), WESCO owes to the Trusts interest, at the  
20 contractual rate, on any and all unpaid contributions and liquidated damages from the dates the sums  
21 were originally due to the Trusts through the date of judgment.

22  
23           **WHEREFORE**, the Trusts pray for judgment against WESCO, as follows:

24           1.     For an order compelling WESCO to submit to and cooperate with the audit of their  
25 books, documents, and other things by the Trusts duly appointed representative;

26           2.     For unpaid fringe benefit contributions if any, in amounts as proven;

27           3.     For damages for breach of contract in amounts if any, as proven;

28           4.     For liquidated damages in amounts if any, as proven;

- 7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28